

DOCKET
NUMBER

U.S. DISTRICT COURT
WEST. DIST. OF WISCONSIN

SEP 13 2002

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN
FILED/RECEIVED
JOSEPH W. SKUPNIEWITZ, CLERK
CASE
NUMBER

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NEIL GAIMAN and
MARVELS AND MIRACLES, LLC,

Plaintiffs,

-vs-

Case No. 02-C-0048-S

TODD McFARLANE,
TODD McFARLANE PRODUCTIONS,
INC., TMP INTERNATIONAL, INC.,
McFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,

Defendants.

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Telephone Deposition of:

JAMES VALENTINO

= = = = =

U.S.C.A. - 7th Circuit

FILED

NOV 26 2003 JO

GINO J. AGNELLO
CLERK

Date: Thursday, September 5, 2002

Time: 3:10 o'clock p.m.

Reported by LINDA KUHLMAN

03-1461

I N D E X

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133 - Notice of Deposition dated August 15, 2002. . . .	7
134 - Spreadsheet with fax cover sheet dated August 28.	8
135 - Spreadsheet with fax cover sheet dated August 21.	8
136 - Spreadsheet dated January 24, 1996.	--
138 - Image Comics, Inc. Print Run Instructions dated 5/22/98	28
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146 - Image Comics Press, Inc. Order Sheet.	53
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1 TELEPHONE DEPOSITION of JAMES VALENTINO,
2 a witness of lawful age, taken on behalf of the plaintiffs
3 in the above-entitled cause, wherein Neil Gaiman, et al.
4 are the plaintiffs and Todd McFarlane, et al. are the
5 defendants, pending in the District Court of the
6 United States for the Western District of Wisconsin, before
7 LINDA KUHLMAN, a Notary Public in and for the State
8 of Wisconsin, at the offices of Foley & Lardner, Attorneys
9 at Law, 150 East Gilman Street, Madison, Wisconsin, on
10 September 5, 2002, commencing at 3:10 o'clock p.m.

11 A P P E A R A N C E S

12 JEFFREY A. SIMMONS,
13 FOLEY & LARDNER, Attorneys at Law,
14 150 East Gilman Street, Madison, Wisconsin,
 appearing on behalf of the plaintiffs;

15 EUGENIA G. CARTER, (By telephone)
16 LaFOLLETTE, GODFREY & KAHN, Attorneys at Law,
17 One East Main Street, Madison, Wisconsin,
18 appearing on behalf of the defendants
 Todd McFarlane, Todd McFarlane Productions,
 Inc., TMP International, Inc. and McFarlane
 Worldwide, Inc.;

19 PETE SALSICH, (By telephone)
20 BLACKWELL SANDERS, LLP, Attorneys at Law,
21 720 Olive Street, St. Louis, Missouri,
22 also appearing on behalf of the defendants
 Todd McFarlane, Todd McFarlane Productions,
 Inc., TMP International, Inc. and McFarlane
 Worldwide, Inc.;

23 R. SCOTT FELDMANN, (By telephone)
24 BROBECK, PHLEGER & HARRISON, LLP,
25 Attorneys at Law, 38 Technology Drive,
 Irvine, California, appearing on behalf of
 the defendant Image Comics, Inc.

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1 MR. SIMMONS: I'm going to have the
2 court reporter swear in the witness.

3 JAMES VALENTINO,
4 called as a witness, being first duly
5 sworn in the above cause, testified
6 under oath as follows:

7 EXAMINATION

8 BY MR. SIMMONS:

9 Q Mr. Valentino, this is Jeff Simmons, and I'm the
10 attorney for Neil Gaiman and Marvels & Miracles. Have
11 you ever given a deposition before?

12 A Yes, I have.

13 Q When was that?

14 A About five years ago.

15 Q Can you just tell me a little bit about that case.

16 A My son was being sued.

17 Q Okay. We'll just go over a few ground rules with you
18 here. We're obviously on the phone here. The point of
19 the deposition, I'm just going to ask you a series of
20 questions and get your answers, but we want to make a
21 clear record for the court reporter. So particularly
22 since we're over the phone it will be important for you
23 to speak up.

24 If I ask you a yes or no question, try to
25 articulate either yes or no, rather than um-hum or

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1 un-uhn, just so it will show up properly in the record.
2 We should just try not to talk over each other. When
3 I'm asking a question, try to let me finish, and when
4 you're answering the question, I'll try to do the same.
5 Again, that will help the court reporter get a clear
6 record.

7 If I ask you a question and you don't understand
8 what I'm saying, the question doesn't make sense, feel
9 free to let me know, ask me to rephrase the question.
10 Otherwise, if I ask you a question and you answer it,
11 I'm going to assume you understood what I was asking.

12 If at any time you need to take a break, just let
13 me know and we can take a short break, although I'm
14 hoping this deposition will go pretty quickly.

15 Scott, should we designate this whole thing
16 attorneys' eyes only, is that -- it's up to you. I
17 think your documents are designated confidential
18 attorneys' eyes only?

19 MR. FELDMANN: We'll go ahead and do
20 that.

21 Q Mr. Valentino, what's your position at Image Comics?

22 A I'm the vice president, publisher.

23 Q How long have you held that position?

24 A Since October 1999.

25 Q Okay. How long have you been with Image Comics?

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1 A Since its inception, February 1st, 1992.

2 Q Can you describe for me what your duties have been at
3 Image since you first started working there.

4 A Since I first started work as a publisher?

5 Q Since you first started working at Image.

6 A I co-founded Image Comics along with five other artists,
7 creators, so my position was co-owner, co-founder.

8 Q And so what did you do in that capacity?

9 A I created comic books basically that were published
10 through Image Comics.

11 Q How did your position or duties change when you became
12 vice president and publisher?

13 A I took over the day-to-day operations of the company.

14 Q What sort of things does that include?

15 A It includes making sure that the office runs, it
16 includes bringing new people into the company, bringing
17 in new books, dealing basically with day-to-day
18 operations, is what it includes, whatever comes up. The
19 buck stops at my desk.

20 Q What's your involvement in the financial matters of the
21 company?

22 MR. FELDMANN: Objection, asked and
23 answered. You can answer the question if you
24 understand it. If you don't -- do you understand
25 the question?

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1 THE WITNESS: Not particularly, no.

2 Q Actually why don't we turn to Exhibit 133. That's the
3 Notice of Deposition. Do you have that in front of you?

4 A Yes.

5 Q Flip to the second page of that.

6 A Yes.

7 Q You see five topics that are listed?

8 A Yes, I do.

9 Q Have you had a chance to review this deposition notice?

10 A Yes.

11 Q And you're the person designated to speak on all five of
12 those topics?

13 A That's correct.

14 Q You'll note that topic 2 is the cover prices of the
15 publications?

16 A Yes.

17 Q And topics 4 and 5 relate to revenue paid by Image to
18 defendants in this action, correct?

19 A Correct.

20 Q Those topics to me seem to relate to some of the
21 financial matters of Image Comics. I guess, referring
22 back to the deposition notice with regard to revenue
23 paid to any of the defendants, what would your
24 involvement have been in Image paying revenue to any of
25 the defendants in this case?

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1 MR. FELDMANN: Are you talking about
2 his personal knowledge or in preparation for this
3 deposition?

4 MR. SIMMONS: I'm talking about his
5 day-to-day duties as vice president and publisher.
6 What involvement would he have in paying revenue to
7 any of the defendants. It's not a trick question.

8 A Okay. I'm the boss. I have a controller. I have a
9 controller who is the one who does tally sheets and gets
10 the information. She brings that information in to me.
11 It's all backed up. I sign the paychecks and that's the
12 involvement.

13 Q Okay. So any checks that go out to Todd McFarlane
14 Productions or any other company whose works you
15 publish, any of those checks come through you before
16 they go out, is that a fair statement?

17 A That's correct.

18 Q That's all I'm looking for. I turn your attention to
19 the next two exhibits, Exhibits 134 and 135.

20 A One moment, please. You want to take these in order
21 here?

22 Q The spreadsheets, are you familiar with these two
23 documents?

24 A Yes.

25 Q Were you involved in preparing Exhibits 134 and 35?

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1 A No. I instructed Ms. Tracy Hale to prepare these
2 documents.

3 Q Tracy Hale is your controller?

4 A That's correct.

5 Q Okay. But you're prepared to answer questions about
6 these documents?

7 A To the best of my ability.

8 Q Okay. I guess we should back up. What did you do to
9 prepare for this deposition?

10 MR. FELDMANN: I'll just jump in. I
11 would instruct you not to answer about any
12 communications or activities that you undertook at
13 my direction, either directly speaking with you or
14 information that's passed along to you by
15 Ms. Hale. Other than that you can feel free to
16 discuss anything you'd like.

17 Q Yeah. I'm not looking for conversations with your
18 attorneys.

19 A There's --

20 MR. FELDMANN: If there's anything
21 else that's --

22 A I think it's pretty much all privileged at this point.

23 Q Did you review financial documents that had been -- or
24 any documents that had been produced by Image Comics as
25 part of this lawsuit?

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1 A Yes.

2 Q And did you review any documents that may have been used
3 to compile the spreadsheets that are Exhibits 134 and
4 135?

5 A Yes.

6 Q What sorts of documents did you review?

7 A I reviewed the individual spreadsheets on various books
8 in question here.

9 Q Okay. And do you know whether all those documents that
10 you reviewed were previously produced to the plaintiff
11 in this case?

12 A Well, I think they have our Image Comics designation on
13 them, except for these two spreadsheets which we were
14 not obligated to create, just we did to speed your
15 inquiry along.

16 MR. FELDMANN: We did not produce
17 these original top level spreadsheets here marked
18 Exhibit 134 and Exhibit 135, because those were
19 created solely to assist preparation and testimony
20 in this 30(b)(6) deposition.

21 Q Okay. Mr. Valentino, can you explain to me what some of
22 the differences are between Exhibits 134 and 135? I'm
23 looking at a comparison of the two spreadsheets.

24 A Right. Okay. The --

25 MR. FELDMANN: The most recent one I

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1 believe that we faxed to you appears to be
2 Exhibit 134 and then the one that I sent you
3 earlier that has the fax strip, 8-21-02. That's
4 Exhibit 135. That's a recent version of exhibit --

5 Q What are the differences?

6 A The differences that I see between the two documents is
7 Document 134 has Money Received from Distributors as
8 opposed to 135 which is marked Money Received by
9 Diamond.

10 In actuality there were a couple of distributors at
11 that point in time, so that was modified to reflect the
12 two major distributors, which would be Diamond and
13 Capital City, as opposed to just Diamond as listed in
14 135.

15 Also, Total Payment, Total Number of Payments that
16 were paid out per book were omitted, I believe being
17 unnecessary.

18 Q I'm sorry, which -- omitted on which?

19 A Omitted from 134. It was on 135. It was omitted on
20 134.

21 Q Okay.

22 A Also I believe 134 has added in newsstand
23 reconciliation, which did not appear on 135.

24 Q I'm going to walk you through now Exhibit 134, the most
25 recent of the two spreadsheets.

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1 A Okay.

2 Q And direct your attention to the third column from the
3 left, the one labeled Number of Units Sold Distributors?

4 A Yes.

5 Q Can you explain how the numbers in those columns -- in
6 that column were arrived at?

7 A Numbers sold is -- the numbers of units sold is derived
8 from taking 57.5 percent average Diamond retail to
9 publisher of the cover price and dividing that into the
10 total dollar amount received by Diamond after the seven
11 percent fee.

12 Q Are you referring to the note that appears on the last
13 page of the spreadsheet?

14 A Yes, I am.

15 Q Why don't we walk through that note then. You say
16 number of units sold is derived by taking 57.5
17 percent --

18 A Correct.

19 Q And what is that number exactly, 57.5 percent?

20 A That is what -- that's Diamond's cut basically of the
21 cover price.

22 Q You said earlier there's another distributor, I believe
23 it was Capital City?

24 A Yes.

25 Q Was Capital City's cut figured into that number?

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1 A Yes.

2 Q Are the percentages for Capital City and Diamond the
3 same?

4 A As far as we can tell, yeah.

5 Q What information did you use to derive that percentage?

6 A We had a contract. We had a contract with Capital City.

7 Q Okay. What does that --

8 A Contract with Diamond, excuse me.

9 Q You had a contract with both or just one?

10 A We couldn't find a contract with Capital City, but we
11 just had the contract with Diamond. They were in
12 competition with one another. They were pretty much --
13 pretty similar.

14 Q So the 57.5 percent number, that's just based on the
15 contract with Diamond, is that right?

16 A That's our best estimate, our best guess of what the
17 percentage would be with Capital as well.

18 Q What did you use to make that guess?

19 MR. FELDMANN: Objection, asked and
20 answered.

21 Q What did you use -- what information did you use to make
22 the guess about what Capital was paying?

23 A We based it on what Diamond is paying.

24 Q You assumed Capital is paying the same as Diamond?

25 A Yeah, within a reasonable amount, yes.

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1 Q What do you mean by that, within a reasonable amount?

2 A As I said we're, you know, we're basing it off the best
3 information we have at hand.

4 Q This percentage of 57.5 percent is the average sale
5 price to Diamond. Did that -- has that percentage
6 changed over time?

7 A It has fluctuated, yes. It's an average percentage.

8 Q Can you tell me -- do you know what the spread is, what
9 the lowest amount they paid is versus what the highest
10 amount they paid was?

11 A No, I'm sorry, I can't.

12 Q Okay. And again, I'm referring to the note on
13 Exhibit 134 where it says the average Diamond retail to
14 publisher, do you mean -- when you say -- I think it
15 says retail. It's difficult to read. Is that what it
16 says?

17 A Yes, it does.

18 Q Do you mean by that the price that Diamond paid to the
19 publisher?

20 A It's their discount to the retailer. Okay. They sell
21 to a retailer. We sell to them, they sell to the
22 retailer.

23 Q Sure.

24 A Okay.

25 Q So 57 percent is the percentage of -- is derived by

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1 taking the ratio of what they -- the price that the
2 retailer pays to the cover price, is that correct?

3 A Yes.

4 Q Okay. And what's -- at the end of that note you say the
5 seven percent fee. Do you see where that is?

6 A That would be Diamond's fee to us.

7 Q Okay. So that's -- Diamond pays you seven percent?

8 A Hold on one second.

9 Q Sure.

10 MR. FELDMANN: Just a second, Jeff.

11 (Discussion off the record)

12 A That's correct. Sorry for the interruption.

13 MR. FELDMANN: Sorry.

14 Q So again, seven percent is what's paid by Diamond to
15 Image?

16 A No. That's the fee that they charge Image, their
17 processing fee, whatever it's called.

18 Q Okay. Okay. Does Image maintain any records of the
19 actual number of magazines -- comic books sold for each
20 issue?

21 A Yes.

22 Q Well, describe those records for me. What are those
23 records?

24 A They're in the form of a weekly Diamond sales report.

25 Q Okay. What's contained on the weekly Diamond sales

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1 report?

2 A How many units are sold.

3 Q Where does that information come from?

4 A It comes --

5 MR. FELDMANN: Objection, lack of
6 foundation.

7 A Personal knowledge.

8 Q Do you know where the information comes -- well, first
9 of all, it's a weekly -- what's the document called
10 again?

11 A It's called a weekly Diamond sales report.

12 Q Okay. Is that a document that somebody at Image Comics
13 prepares?

14 A No. It comes from Diamond. Diamond collects this
15 information from retailers. They place their orders,
16 Diamond collects those orders, then they tell us how
17 many orders they have.

18 Q For what period of time have you been receiving those
19 weekly Diamond order sheets, order reports?

20 A Well, again you're -- I'm not certain here. Do you mean
21 per unit or do you mean how long have we received these
22 reports?

23 Q How long have you been receiving those reports from
24 Diamond?

25 A As far as I know since we've been doing business with

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1 them.

2 Q So I guess my question is why wouldn't you use those
3 documents in determining what the number of units sold
4 was?

5 A Well, sir, with a matter of over 12,000 pages of
6 documents.

7 Q These reports from Diamond constitute 12,000 pages of
8 documents?

9 A That's correct. We really didn't have enough time to
10 look at every single one of them.

11 Q That's fine. I'm trying to get an understanding of how
12 the numbers were derived.

13 A Okay.

14 Q So the numbers on Exhibit 134 are your best estimate?

15 A That's correct.

16 Q Not using the Diamond documents?

17 A That's correct.

18 Q Turn to the next column on Exhibit 134, Money Received
19 From Distributors?

20 A Yes.

21 Q Can you tell me how the numbers in that column were
22 compiled?

23 A Once again those numbers were compiled from the sales
24 reports.

25 Q From which sales reports?

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1 A The Diamond sales reports. I'm sorry.

2 Q This is the 1,200 sheets of documents you were talking
3 about before?

4 A Yes.

5 Q I thought you just said earlier you didn't refer to
6 those weekly Diamond reports in preparing the number of
7 units sold, correct?

8 MR. FELDMANN: Objection, misstates
9 prior testimony. He wasn't able to review all of
10 them.

11 Q Okay. So tell me what you did review.

12 A We just answered that.

13 Q Well --

14 MR. FELDMANN: If I may, Jeff.

15 MR. SIMMONS: Yeah.

16 MR. FELDMANN: Given that we had
17 just a few days to put the spreadsheet together we
18 looked at the contract and then we pulled samples.

19 MR. SIMMONS: The contract being the
20 contract with Diamond distributors?

21 MR. FELDMANN: Yes. And then they
22 pulled the sample reports to try to get the best
23 estimates, for example, in the 57 and a half
24 percent and give you those figures.

25 Now, as he said, you know, you're talking

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1 well over 12,000 pages of documents. They couldn't
2 go through every single one and add them up and do
3 an exact average.

4 A It's the best estimate.

5 Q I understand that. I'm just trying to understand
6 exactly how that estimate was arrived at. So how many
7 of the Diamond reports did you review to come up with
8 the Money Received from Distributors figures?

9 MR. FELDMANN: Can we just take a
10 brief break?

11 MR. SIMMONS: Sure.

12 (A short recess is taken)

13 A We did not review the original source documents. Here's
14 where a bit of my confusion is with your questions.

15 Q Let me jump in here. Source documents, what documents
16 do you mean?

17 A I'm talking about the 12,000 pages referenced earlier,
18 the Diamond weekly sales reports.

19 Q Okay.

20 A We did not review those documents. What we -- but what
21 we did do -- those documents are input into the
22 computer, okay. We took the printout, summarized it,
23 data entry that we had created. This is what we send to
24 creators and stuff like that.

25 That's where we came up with the numbers in both

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1 columns 3 -- no, 4 and 9 -- 4, 6 and 9.

2 Q And by 4, 6 and 9 you're referring to the Money Received
3 From Distributors column, Money Received From Newsstand
4 column and Total Amount Paid to TMP column?

5 A That's correct.

6 Q You're saying the information you received from Diamond
7 in these weekly reports is input into a computer
8 database?

9 A That's correct.

10 Q Is the sales information input into a computer database?

11 A Yes, it is.

12 Q Why didn't you refer to that in providing the sales
13 numbers?

14 A Well, I think you asked for the units sold.

15 MR. FELDMANN: And the cover price.

16 I don't think sales data is one of the five topics.

17 MR. SIMMONS: Topic 1 is
18 number of copies sold.

19 MR. FELDMANN: Number of copies, not
20 necessarily revenue.

21 Q Well, column 3 says Number of Units Sold. That seems to
22 be the same thing to me. So my question is if you've
23 got information on number of units sold in the database,
24 why didn't you refer to that when compiling the
25 spreadsheet in Exhibit 134?

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1 A I'm at a loss.

2 (Discussion off the record)

3 Q Do you need me to clarify the question?

4 MR. FELDMANN: Yes, if you wouldn't
5 mind.

6 Q My understanding of your testimony is that column 3 of
7 Exhibit 134, the column that states Number of Units Sold
8 Distributors, that you used a -- you used the formula
9 described in the note on page 3 of Exhibit 134 to come
10 up with that number, correct?

11 MR. FELDMANN: I'm sorry, we didn't
12 catch that.

13 Q In coming up with the numbers in column 3 of the Number
14 of Units Sold, the way you arrived at that number was
15 through applying this formula that you've described on
16 page 3 of Exhibit 134, where you take 57.5 percent of
17 the average Diamond sale price to publishers, correct?

18 A Correct.

19 Q So in doing your calculation for the number of units
20 sold in column 3, you did not refer to any of the sales
21 information on your database, correct?

22 A Yes, correct. We don't have that in our database. We
23 just had to -- we went from the sales numbers, the
24 dollars.

25 Q Maybe I misunderstood your prior testimony, but I

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1 thought you said the sales information -- the number of
2 units sold is on the database?

3 A I don't believe I said that. Perhaps I did. I don't
4 believe that I said that, though.

5 Q So let's back up again. You receive weekly reports from
6 Diamond distributors, correct?

7 A That is correct.

8 Q The information that's contained on those reports
9 includes the number of units ordered by Diamond, is that
10 correct?

11 A Yes.

12 Q And the amount -- does it include the amount of money
13 paid by Diamond?

14 A It includes the dollar amount paid by Diamond, that's
15 correct.

16 Q Do you input all of the information on those reports
17 into your database?

18 A Just the sales figures.

19 Q What do you mean by sales figures?

20 MR. FELDMANN: Objection, asked and
21 answered. I believe he testified as to revenue
22 earlier.

23 Q So you don't -- is it your testimony that your database
24 does not include the number of units ordered by Diamond
25 distributors?

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1 A That is correct.

2 Q It just includes the amount -- the total sale price?

3 A That's correct.

4 Q Okay. This is a database that you've used personally?

5 A No, it is not.

6 Q So you don't personally know that?

7 A That is correct.

8 MR. SIMMONS: Let me put you on hold
9 for just second here.

10 (Discussion off the record)

11 MR. SIMMONS: Okay, I'm back. Sorry
12 for the delay there.

13 Q Just to summarize here, make sure I've got it straight
14 now, referring back to the Money Received From
15 Distributors column?

16 A Yes.

17 Q These figures in this column to your knowledge reflect
18 money actually received from Diamond distributors?

19 A To the best of my knowledge, yes.

20 Q How does it -- how, if at all, do these numbers account
21 for any money received by Capital City distributors?

22 A It's included. It's inclusive of Capital City.

23 Q And how did you go about finding out what the revenue
24 was received from Capital City?

25 A I don't believe that it was separated. Okay. That, I

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1 think -- I don't believe it was separated.

2 Q You testified earlier that the money received column was
3 comprised of information taken from the weekly reports
4 from Diamond distributors, correct?

5 A Yes.

6 Q Okay. Well, does money received from Capital City
7 distributors appear on the reports from Diamond?

8 A No.

9 Q Okay. So how did you get the money -- where did you get
10 the figures for money received from Capital City?

11 A Hold on a second, please.

12 MR. FELDMANN: Just give us one
13 second.

14 (Discussion off the record)

15 MR. FELDMANN: We're back. Go
16 ahead.

17 MR. SIMMONS: I just want to get
18 this on the record, that it appears that
19 Mr. Valentino is conferring either with you or
20 Ms. Hale before answering practically every
21 question here.

22 MR. FELDMANN: No, that's not
23 accurate. What we're trying to do is make sure we
24 understand your questions and the basis for it.
25 Image has gone above and beyond by creating these

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1 documents, which I think speak for themselves, are
2 pretty straightforward.

3 MR. SIMMONS: If Mr. Valentino
4 doesn't really know the answer to these questions
5 and has to rely on Ms. Hale for the answer to
6 everything, it seems to me it would be more
7 appropriate to take Ms. Hale's deposition.

8 MR. FELDMANN: I don't think the
9 controller is sufficiently senior to be a designee
10 under a 30(b)(6). The CFO might be, if there
11 were a CFO with knowledge. But my knowledge is
12 controllers are not sufficiently senior.

13 MR. SIMMONS: That's fine. I wanted
14 to get that on the record.

15 Q So you were going to answer my question about how you
16 arrived at revenue received from Capital City. Is this
17 derived from your internal database?

18 A I stated before, the reports we have to go back to are
19 what we paid the artists for payout.

20 Q I didn't hear the last part of your answer.

21 A Payout. The artist has to be paid. The artists are
22 paid based on, you know, the money that we receive. So
23 we have to prepare a report for them. That is in our
24 internal database. That's there where these figures
25 come from.

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1 Q So I thought earlier you testified it came from the
2 database of information from Diamond -- of information
3 compiled from Diamond distributors?

4 A That's where we get the information. It's input into
5 the computer. It's our internal database. Okay.

6 Q Where did the information from Capital City come from
7 that was input into the database?

8 MR. FELDMANN: Objection, vague as
9 to time.

10 Q Well, how far back in time does that database go? Does
11 it go back to 1993?

12 A Yes.

13 Q Okay. And for how long did you -- for what period of
14 time did Image Comics use Capital City as a distributor?

15 A That would be 1992 to I believe '96, somewhere in that
16 vicinity. I believe they went bankrupt around 1996.

17 Q So does the database that you were referring to contain
18 information -- does the database extend all the way back
19 to 1992, that time period?

20 MR. FELDMANN: Hold on one second.

21 (Discussion off the record)

22 A Yes. Yes.

23 Q Okay. And for the period 1992 to 1996 does it contain
24 sales information from Capital City distributors?

25 A Yes.

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1 Q And do you know -- I'm trying to phrase this properly
2 here. Do you know what information from Capital City
3 was used to input the data into your database?

4 A No, sir, I do not.

5 Q Okay. Has this database changed at all since -- and I
6 guess I mean, have you used the same computer program or
7 format for this database since 1993?

8 A I believe so, yes.

9 Q Okay. We'll move to the next column on Exhibit 134,
10 Number of Units Sold Newsstand.

11 A Yes.

12 Q Can you just explain to me how those numbers were
13 arrived at?

14 MR. FELDMANN: You're referring to
15 the footnote?

16 MR. SIMMONS: He can refer to the
17 footnote if he wants.

18 A Newsstand units sold is an estimated average based on
19 sample contracts with newsstand distributors.

20 Q Okay. Why don't you walk me through that calculation
21 that's there. Net sales equals the cover price, that
22 much I understand, times the number of units. Where
23 does -- what is the number of units?

24 A The number of units would refer to those books that were
25 shipped.

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1 Q Okay.

2 A Newsstand is a returnable market, so number of books
3 that are shipped is not necessarily the same as the
4 number of units that are sold. There's a difference
5 there. It can be very wide.

6 Q Sure. So the number of units -- correct me if I'm wrong
7 here, I'm trying to understand. The number of units
8 that were shipped is actually larger than the number
9 that's reflected in the number of units sold newsstand?

10 A Yes.

11 Q So the number of units sold newsstand are the actual
12 number of units that are sold?

13 A Yes.

14 Q Again, just so I understand, any returns from the
15 newsstand would be -- have already been taken out of the
16 equation by the time of arriving at the number of units
17 sold newsstand in this column?

18 A That's correct.

19 Q Okay. Bear with me for a second here. I think I'm
20 going to turn you to a new exhibit now. I'm going to
21 skip exhibit -- we'll renumber these.

22 Why don't you turn to what's currently labeled
23 Exhibit 138.

24 A Okay.

25 Q Do you see it's a little table with appears to be orders

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1 of Spawn trade paperback Volume 6?

2 A Yes.

3 Q Do you recognize this document or this format of
4 document?

5 A Yes.

6 Q Can you just tell me what the document is.

7 MR. FELDMANN: Objection, document
8 speaks for itself.

9 A Print Run Instructions is what it is. This is the
10 instructions I sent to the printer.

11 Q Okay. And that's all I'm looking for. So the total
12 orders on that document say 15,000?

13 A That's correct.

14 Q Your understanding is that's the total number of Spawn
15 Volume 6 trade paperbacks that Image asked the printer
16 to print for it?

17 A That's correct.

18 Q Referring back to Exhibit 134, if you flip to the last
19 page of Exhibit 134 I think the last entry on your
20 spreadsheet is the Spawn trade paperback No. 6?

21 A Yes.

22 Q I'm just -- the number of units sold is 13,830?

23 A Yes.

24 Q And the total orders on Exhibit 138 is somewhat higher
25 than that, 15,000. I'm just wondering if you can

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1 explain for me what might account for the difference.

2 A I'm sorry?

3 MR. FELDMANN: You're talking about
4 between the 15,000 and 13,800?

5 A The 15,000 ordered and the 13,000 sold?

6 Q Yep.

7 A That would be what we call reorders. In other words,
8 what we do is we do an initial shipment, okay. We
9 overprint in anticipation of the book being sold out and
10 then store it. As they sell the units, then we reorder
11 that particular book, restock it in other words.

12 Q So I'm sorry, what number would be the reorder number,
13 though?

14 A The reorder would be the difference between the two.

15 Q Okay. So the difference between the two, those are
16 numbers that they were not sold -- or they were
17 reordered but they weren't sold, is that your testimony?

18 (Discussion off the record)

19 A Could you repeat the question.

20 Q Let me try to rephrase it. I guess I'm just wondering,
21 138 shows an order of 15,000. The spreadsheet shows
22 number sold. The difference between the two, where did
23 those units go?

24 A It says right here on the sheet here, 138, 25 units went
25 to Todd McFarlane Productions. It's hard for me to see

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1 these numbers. It looks like 7104 went into inventory.
2 400 went to Todd McFarlane Productions, Tempe. Image
3 Comics comp list took 51. Image Comics took 100.

4 They get disbursed, okay. So, you know, I'm going
5 to take a leap of faith here and say that's where they
6 go.

7 Q Well, why don't you -- looking at Exhibit 138, the first
8 two entries, Diamond Comics and then inventory, do you
9 see those two entry?

10 A Yes.

11 Q 14,400 copies?

12 A Yes.

13 Q That amount is still greater than the number of units
14 sold reflected on Exhibit 134, correct?

15 MR. FELDMANN: Objection. The
16 documents speak for itself.

17 Q You can answer the question.

18 A Yeah. You know -- yes, it is. You have damaged books
19 that are unsalable. You have books that are kept in
20 inventory. You always have to account for spoilage and
21 things like that.

22 You always overprint what have been ordered. The
23 books that are ordered, you overprint to account for all
24 of these things. You account for comps, you account for
25 damages, you account for reorders.

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1 MR. FELDMANN: Comp is
2 complimentary?

3 A Complimentary copies that are sent out to any number of
4 people -- creators, people in Hollywood, whatever. So
5 yes, you always overprint what was initially ordered,
6 always.

7 Q Sure. The first two entries on Exhibit 138 shows --
8 column one says Destination, Diamond Comics and next
9 says inventory shipped to Diamond.

10 Can you explain to me what the difference is
11 between those? They both -- can you explain what the
12 difference is?

13 A The first one, the 7320 units, that's the initial order.

14 Q Okay.

15 A And the other one is reorders, comps, you know, that
16 kind of thing, the inventory essentially.

17 Q But it's all shipped to Diamond, correct?

18 A Diamond holds an inventory as a warehousing. That's
19 part of their distribution. In order to distribute
20 effectively they have to have the book on the premises
21 right there. So, you know, that's how they deliver the
22 books to the stores.

23 Q At what point in this process does Diamond pay Image for
24 the comic books that have been shipped to Diamond?

25 A They pay us -- you mean when do they pay us for the

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1 books that are shipped to them?

2 Q Correct.

3 A They pay us 60 days after they receive the books.

4 Q So referring to this second entry on Exhibit 138, the
5 inventory shipped to Diamond, would they have paid --
6 would Diamond have paid Image for all 7104 comic books
7 shown in the quantity column there?

8 A No, they would not. They would pay us for the ones they
9 actually sell.

10 Q Go ahead and finish.

11 A They would pay us for the initial orders, the 7320,
12 because those books are presold. They're already sold
13 prior to going to press. The others are being held
14 for -- you know, they're being held for reorders.
15 They're being held to send out for complimentary copies
16 or whatever.

17 So they would not pay us -- that's where the
18 multiple payments come in. They would not pay us until
19 those books were actually sold. They're holding it on
20 consignment, I guess is the easiest way to describe it.

21 Q Okay. I'll have you turn now to Exhibit 139.

22 A Okay.

23 Q Do you recognize this document or at least this format
24 of document?

25 A Yes.

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1 Q This is a document that Image -- this sort of document
2 is a document Image uses?

3 A Yes, it is.

4 Q Can you just explain to me what this document is or
5 generally what this format of document is intended to
6 show?

7 MR. FELDMANN: Do you understand the
8 question?

9 A I'm not quite certain. It basically shows the total
10 number of books invoiced, in the accrual, with reorders,
11 with that kind of stuff. That's basically what it's
12 showing, how much money is owed based on how many units
13 are sold.

14 Q Is the number of books invoiced or sold actually shown
15 on this table? I guess I refer you to the fourth line
16 from the top it says Total Invoiced. I'm assuming based
17 on the decimals that's a dollar amount not a unit,
18 correct?

19 A Yes.

20 Q Looking at this I don't see the units. If they're on
21 here, point them out to me.

22 A They are not on here.

23 Q Okay. Referring you to the fourth line from the bottom
24 which says Due to Creator for Book?

25 A Yes.

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1 Q Do you see that line?

2 A Yes, I do.

3 Q And then go all the way to the right-hand column and it
4 says \$9,506.85, do you see that?

5 A Yes, I do.

6 Q Is that number reflected there, that would be the amount
7 paid to the creator, I assume in this case is Todd
8 McFarlane Productions, for the Spawn trade paperback
9 Volume 6?

10 A Yes.

11 Q Referring you back to Exhibit 134, last page of that,
12 the entry for Spawn trade paperback Volume 6.

13 MR. FELDMANN: I'm sorry, just a
14 minute here.

15 Q The spreadsheet, the current spreadsheet.

16 A Yes.

17 Q The entry for Spawn trade paperback Volume 6, last entry
18 there.

19 MR. FELDMANN: The far right-hand
20 column?

21 MR. SIMMONS: Sure. Total amount
22 paid to TMP, I think it says.

23 MR. FELDMANN: The 6,522?

24 Q Do you see that number, Mr. Valentino?

25 A Yes, I do.

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1 Q Can you explain to me why the number on the spreadsheet
2 is about 3,000 less than the number reflected on
3 Exhibit 139 as being due to the creator?

4 A Yes. Spreadsheet --

5 Q 134.

6 A No, the other one, 139.

7 Q Sure.

8 A This is the second printing of this trade paperback.
9 The one on 134 I believe is the first printing. So
10 again, what happens with a book is you can go into
11 multiple printings.

12 Each multiple printing will have, you know, a
13 different number of units and a different number of
14 dollars.

15 Q Okay. So is there anyplace on Exhibit 134 where the
16 amount paid to TMP for the second printing is shown?

17 MR. FELDMANN: Actually, I think
18 we're confused here, because your earlier exhibit
19 shows separate payments that did not sum to the
20 \$9,506.85 on 139. Those are separate things.

21 MR. SIMMONS: Just to be clear,
22 you're referring to Exhibit 139?

23 MR. FELDMANN: Yeah, I believe so.

24 (Discussion off the record)

25 THE WITNESS: Hold on one second. I

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1 want to ask Scott a question about this.

2 MR. FELDMANN: Just a second.

3 (Discussion off the record)

4 MR. FELDMANN: We're back here.

5 A I'm sorry for the confusion. I'm not a controller,
6 okay. You're asking me a lot of financial questions.
7 We did the best we could do in the short amount of time
8 we've had.

9 From what I can gather, the number on 139 does not
10 reflect any cost holdbacks that we may have from TMP
11 from various other publications, et cetera, et cetera.

12 We pulled this together very, very quickly.

13 Q Sure. Can you explain what you mean by that, cost
14 holdbacks?

15 A Each book, especially a trade paperback, it's incredibly
16 expensive to print it, to publish it. What we tend to
17 is to borrow from Peter to pay Paul.

18 So if we're going to press on a trade paperback
19 that's going to cost somewhere in the vicinity of 30 to
20 40 grand and TMP, for example in this case, has a
21 payment due to them, we may hold money due to them to
22 help defer the printing cost, and then it will catch up
23 to it in the accrual, which is where get paid for the
24 units being sold as things accrue.

25 It's sort of complex in a way, but it's sort of

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1 like borrowing from Peter to pay Paul. That's probably
2 where this discrepancy is coming in.

3 Q You don't know but that's your best guess?

4 A That's our best guess.

5 Q Why don't we turn to Exhibit 140?

6 A Okay.

7 Q Can you tell me what Exhibit 140 is?

8 A Again, these are Print Run Instructions, Volume 6,
9 second printing.

10 Q And it reflects that another 10,060 issues were printed?

11 A Yes.

12 Q Turning back to a comment you made earlier, I think you
13 had initially suggested that the reason why the number
14 on 134, the total amount paid to TMP number for Spawn
15 Volume 6, reason why it was low might be because it
16 didn't include the second printing. Am I accurately
17 recalling your testimony?

18 MR. FELDMANN: You're referring now
19 to Exhibit 138 or 134?

20 MR. SIMMONS: 134.

21 A Yes, I believe so. Again --

22 Q I guess I'm just looking at Exhibit 140 and I'm
23 wondering if it's possible that the second printing of
24 the Spawn trade paperback Volume 6 was simply not
25 included in the spreadsheet Exhibit 134, is that

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1 possible?

2 A I'm sorry, I don't know.

3 Q Sure.

4 A I do not know.

5 Q But looking at -- why don't we compare Exhibits 138 and
6 140?

7 A Yes.

8 Q Exhibit 138 reflects total orders of 15,000. So you
9 think that is the initial printing of Spawn Volume 6?

10 A Yes, I believe so.

11 Q Okay. Then Exhibit 140 reflects an additional 10,000
12 copies being printed?

13 A Yes.

14 Q And then again referring back to Exhibit 134, the number
15 of units sold there of Spawn Volume 6 is only 13,830?

16 A Right. If you look at -- one thing I just noticed here
17 in looking at this. On 140, Diamond Comics quantity
18 zero. So it looks to me like the vast majority of these
19 books, just looking at this, went directly into
20 inventory which was shipped to Diamond direct.

21 But since the first line -- now again, the first
22 line to the best of my knowledge on 138, the 7320 units,
23 that was Diamond initial orders.

24 Q Okay.

25 A Since we're at zero here on 140 with Diamond Comics

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1 initial orders, my best guess is it was to accommodate
2 reorders. That's why we see 9975 in the second column
3 inventory as opposed to on the first column Diamond
4 Comics, Diamond pickups.

5 It seems to me like they sold out in -- they sold
6 out of their inventory. This inventory on here, on 138,
7 7104, either was gone or dangerously close to being
8 gone. They manufactured to move it into inventory
9 directly.

10 Q Referring back to Exhibit 138, the first two entries,
11 you said the 7320 is the initial shipment to Diamond
12 direct which they've already arranged to have sold, is
13 that accurate?

14 A That's correct.

15 Q The next entry, the 7104, is shipped into inventory in
16 anticipation of future sales?

17 A That's correct.

18 Q What you just said to me is, looking at Exhibit 140,
19 Diamond has ordered another 9975 for inventory, correct?

20 MR. FELDMANN: Objection, misstates
21 prior testimony.

22 Q Correct me if I haven't stated it correctly.

23 MR. FELDMANN: Do it again.

24 A I'm not real sure where the confusion lays here. Let me
25 try to explain how it works. Maybe we can get there.

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1 Diamond publishes a catalog. Retailers receive this
2 catalog. They place their orders for a book, okay.
3 That would be the Diamond PU, the very first line here,
4 okay. That's the number of books that retailers
5 ordered, correct?

6 Q Correct.

7 A Okay. Now, second line is what we've placed into
8 Diamond inventory, okay.

9 Q Second line on Exhibit 138?

10 A That's correct. Now, as time goes on Diamond does not
11 reissue the book in a catalog again. In other words,
12 they don't necessarily always offer it again to
13 retailers, but retailers have the right to order it from
14 them.

15 Q Right.

16 A That's why -- so you know, again it's my best guess, but
17 looking at this, what this is telling me is we did not
18 resolicit the book in Diamond's catalog. We did not
19 offer it again to retailers. Retailers are coming in
20 ordering this book directly from Diamond. Okay. But it
21 wasn't offered, and that's why it's zero in the first
22 column on 140, and that's why the inventory is the 9975.

23 Diamond did not order that. Instead, that number
24 was derived at by TMP or by Image or whoever at that
25 particular time. I don't know where that decision was

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1 made or by whom.

2 Q Let me see if I understand. So looking at Exhibit 138,
3 the first two entries --

4 A Yes.

5 Q -- is it your best guess based on looking at Exhibit 138
6 and Exhibit 140 that the 14,424 issues that are
7 reflected in Exhibit 138 and the first two entries on
8 Exhibit 138 were sold by Diamond?

9 MR. FELDMANN: Objection, misstates
10 prior testimony. You can answer.

11 A You know --

12 Q I'm trying to understand your testimony. Correct me if
13 I'm wrong.

14 A Okay. The best information I have is that 7320 units
15 were ordered initially by Diamond. 7104 units were
16 placed in inventory.

17 Now, this is dated 5-22-98. By 11-13-98 we are
18 putting into inventory 9975 dollars.

19 Q That's units.

20 A Units, excuse me.

21 Q Let me just stop you. Let's take this a piece at a
22 time. So you're shipping an additional 9975 units to
23 Diamond inventory?

24 A Right.

25 Q Let me just finish. So your best guess as to what's

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1 happening here is that the 7104 units that had
2 previously been shipped into Diamond's inventory have
3 now either been sold or close to having all been sold?

4 MR. FELDMANN: Objection, misstates
5 prior testimony.

6 Q Have I accurately characterized what you're trying
7 explain to me?

8 A No. The problem is, as stated earlier, I can't know how
9 many of these books are damaged. I don't know how many
10 of these books were lost. I can't accurately tell you
11 what the status of that 7104 units would be.

12 Some of them may have been sold, some of them may
13 have been damaged. I don't know. All I do know is --
14 all I can see from there is 9975 units were placed back
15 into inventory from a second printing. What happened to
16 the 7104 I honestly don't know.

17 Q But is it fair to say that initially Diamond wanted a
18 total of 14,242 units?

19 MR. FELDMANN: Objection, misstates
20 prior testimony.

21 Q Is it fair to say that?

22 MR. FELDMANN: You can answer.

23 A It's only fair to say 7320 units. That's all they have
24 had orders from from the retailer. It was up to the
25 decision of TMP to determine how many books were going

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1 into inventory for future sales and to make up damages
2 and that kind of thing. That would be their decision.

3 First number is Diamond's decision. The second
4 number would be TMP's decision.

5 Q Okay. So --

6 MR. FELDMANN: We're referring to
7 Exhibit 138?

8 THE WITNESS: I'm referring to
9 Exhibit 138, I'm sorry.

10 Q So let me go at this another way. Is it fair to say --
11 look again comparing Exhibits 138 and 140. Am I
12 accurate in stating that approximately, let's see here,
13 approximately 24,000 units were shipped to Diamond
14 either at Diamond's request or because TMP said, "Ship
15 more to Diamond"? I'm summing up the three entries.

16 A You're summing up 138 and 140 here, the numbers we have
17 on here?

18 Q Right. It's about 24,000?

19 A Yes, fair to say that they were shipped to Diamond, yes.

20 Q Referring back to Exhibit 134.

21 A Yes.

22 Q The entry for Spawn Volume 6 says number of units sold
23 13,830?

24 A Once again, you're mixing up one column with the other.
25 The number of units sold reflects how many units were

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1 sold. All the books in Diamond inventory are not
2 necessarily sold. That's about as simply as I can put
3 it.

4 Q So it's your testimony that possibly 11,000,
5 approximately 11,000 units may have been shipped to
6 Diamond but weren't sold?

7 MR. FELDMANN: Objection, lack of
8 foundation, personal knowledge. You can answer.

9 A From what I can see here, yes. Okay. I don't have any
10 way of knowing what's in their inventory or what remains
11 in their inventory.

12 Part of this, if I may, which might help you a
13 little bit, is you want books in inventory, particularly
14 perennials. A trade paperback is a perennial. It's not
15 something that's pulled off the stands after a week or
16 two. It's something that can be sold in perpetuity.

17 You want that to remain in inventory so as
18 retailers sell out they can reorder more. This helps
19 bring in new readers and it helps with current sales on
20 books. So you want an inventory. You want a stack of
21 books there at the distributors available for retailers
22 to order at all times.

23 Does that help make a little bit more sense to you?

24 Q Sure. Is it also possible that the entry on Exhibit 134
25 for Spawn Volume 6 showing number of units sold, is it

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1 possible that that number does not include the second
2 printing of Spawn Volume 6?

3 MR. FELDMANN: Objection, calls for
4 speculation. You can answer if you know.

5 A I honestly don't know. I'm sorry. I do not know.

6 Q That's all I want is what -- your best answer. Why
7 don't we turn to Exhibit 141. This looks like the same
8 format of document we saw previously for Spawn Volume 6.

9 It's for the Angela Pray for the Hunt poster, is
10 that right?

11 A Yes.

12 Q I'm looking at the last column of Exhibit 141.

13 A Yes.

14 Q It looks like this was a second printing of the poster,
15 am I reading that correctly?

16 A That what it says on top, yes.

17 Q That would be your reading of the document as well?

18 A Yes.

19 Q Turning to Exhibit 134. The Angela Pray for the Hunt
20 entry is on the first page of the spreadsheet, second
21 entry. If you go to the total amount paid to TMP on the
22 right-hand column, it's \$2,106.93?

23 A Yes, I do.

24 Q Referring back to Exhibit 141, if you look at the fourth
25 column, the next to last column of Exhibit 141 --

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1 MR. FELDMANN: You're referring to
2 the accrual 6/00?

3 Q Go to the Due to Creator for Book line close to the
4 bottom.

5 A Yes.

6 Q The number there is \$2,106.93.

7 A Yes, I do.

8 Q That number corresponds with the number entered on
9 Exhibit 134, correct?

10 A Yes.

11 Q I guess my question is, the second printing that's shown
12 on Exhibit 141 --

13 A Yes.

14 Q -- that does not appear to be reflected on Exhibit 134.
15 Is that your reading of these documents?

16 A My reading it's in the negative, but yes, that's
17 correct.

18 Q Why might it be in the negative?

19 MR. FELDMANN: Objection, asked and
20 answered from before.

21 Q Do you know whether the second printing of Angela Pray
22 for the Hunt poster was ever sold?

23 A I don't know. I'm sorry, I do not know.

24 Q That's fine.

25 A This is the first time I'm seeing this particular

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1 document.

2 Q But this is -- Exhibit 141 is a document created by
3 Image to the best of your knowledge, correct?

4 A Yes, it is.

5 Q Turn to Exhibit 142, at the top of the document it says
6 Angela/Glory No. 1?

7 A Yes.

8 Q Do you know who was the creator of that publication,
9 Angela/Glory No. 1?

10 A What do you mean?

11 Q Is it Todd McFarlane Productions, is it one of the other
12 members of the Image partnership?

13 A It was Extreme Studios.

14 Q What is Extreme Studios?

15 A Rob Liefeld owns Extreme Studios, one of the Image
16 partners.

17 Q Quickly on Exhibit 142 go to the Due to Creator for Book
18 line, there's a number in the last column of \$54,628.69,
19 do you see that?

20 A Yes, I do.

21 Q Is it your understanding that's the amount that would
22 have been paid to Liefeld or Mr. Liefeld's company as a
23 result of the Angela/Glory No. 1?

24 A That would be my understanding, yes.

25 Q That's all on that one. I'll turn you to Exhibit 145,

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1 skipping ahead a couple of exhibits.

2 A Okay.

3 Q Do you recognize Exhibit 145?

4 A Yes.

5 Q Can you tell me what it is?

6 A It's the Inventory Recap Sheet for Angela No. 1.

7 Q And the second entry on this table on Exhibit 145, it
8 says Quantity Sold Direct Market, do you see that,
9 261,350?

10 A Yes.

11 Q To your understanding what is that entry intended to
12 reflect? Who are those sales made to?

13 A Those sales would be Diamond orders, the initial Diamond
14 orders.

15 Q Okay. And it would -- Angela Issue No. 1, I'll
16 represent to you, was published back in 1994. Would
17 that also reflect sales or orders of Capital City
18 distributors?

19 A Yes, probably, considering the publication date, yeah.
20 Sorry.

21 Q That's fine. So referring back to Exhibit 134.

22 A Yes.

23 Q If you go the first page of the spreadsheet.

24 A Yes.

25 Q If you go down to the fourth entry from the bottom, see

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1 it?

2 A Angela 1?

3 Q Exactly. And then the column after that, Number of
4 Issues Sold to Distributors?

5 A 235,513.

6 Q Correct. That number is approximately 25,000 units
7 lower than the number reflected on Exhibit 145, correct?

8 A Yes, it looks that way to me.

9 Q I'll just note that Exhibit 145, it appears to have been
10 created back in 1995.

11 MR. FELDMANN: Document speaks for
12 itself.

13 Q You don't have any reason to doubt that's when this
14 document was created, is that right, Mr. Valentino?

15 A I have no reason to doubt that, no.

16 Q Do you have any explanation for why the numbers of units
17 sold differ on these two documents?

18 MR. FELDMANN: Objection, asked and
19 answered.

20 Q Are you still there?

21 A The number on 134?

22 Q Yeah.

23 A Would be a derived number. This is our best guess based
24 on the monies from our database. The other one, the
25 145, this appears to be the actual document. In other

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1 words, this is part of that 12,000, you know.

2 Q This is part of the reports you actually received from
3 Diamond?

4 A No. This is created by us but this was created then.
5 The 134 was our best guess estimate. Okay.

6 So I guess the discrepancy between the two of them,
7 which is like 24,000, something like that.

8 Q Roughly, yes.

9 A I guess that would be the difference between a --

10 Q Is it your testimony, is it your belief that Exhibit 145
11 would be a more accurate assessment of the number of
12 units sold?

13 A Not necessarily, because there could also be things like
14 returns in there and stuff like that, which again I
15 can't really speak to. I don't know.

16 You're asking me -- you know, there could be
17 discrepancy -- it could be returns, damages, blah, blah,
18 blah. There's all -- there are these variables there in
19 printing that are difficult to account for. It's the
20 nature of publishing.

21 Q So you don't know which document would be more accurate,
22 Exhibit 145 or Exhibit 134?

23 MR. FELDMANN: Objection, misstates
24 prior testimony.

25 Q Is that an accurate statement?

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1 MR. FELDMANN: Same objection.

2 Q Mr. Valentino, do you need me to restate question?

3 A Yes, why don't you.

4 Q Mr. Valentino, is it fair to say you simply don't know
5 which document is more accurate, Exhibit 145 or
6 Exhibit 134, at least --

7 A I believe it's fair to say, again, that these are our
8 best guess estimates.

9 Q Which ones are you referring to?

10 A Document 134. You know, if I may.

11 Q Sure.

12 A 145 I believe reflects what was printed, what was
13 shipped. I mean, if you look at it, quantity sold,
14 Image inventory, Rob Liefeld, all these things are on
15 here, so this would probably be what was printed, what
16 was shipped, 80,000 to newsstand, et cetera. The other
17 one I believe is what was paid.

18 Q The other one being?

19 A 134, is what was paid on. Okay. The two aren't
20 necessarily the same. I mean, especially when you're
21 comparing things like newsstands and stuff. It's sort
22 of like you're comparing two different things and trying
23 to make them one.

24 Q I'm trying to understand how you came up with the
25 numbers, is all.

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1 A I'm trying to explain why my confusion is coming in
2 here. We have two different numbers here and we have
3 two different documents that are reflecting two
4 different things.

5 Q They're both documents that were created by Image
6 Comics?

7 A Yes, sir, they were, on very short notice.

8 Q That's fine.

9 MR. FELDMANN: Jeff, can we take a
10 five-minute break?

11 MR. SIMMONS: I think I'm almost
12 done.

13 (A short recess is taken)

14 MR. SIMMONS: I'm back. I think
15 we're just about done here.

16 Q Mr. Valentino, if I could have you turn to Exhibit 146.

17 A Yes.

18 Q Can you just -- do you recognize Exhibit 146?

19 A It looks like an order sheet.

20 Q And I'm just -- we talked earlier about distributors,
21 and I think we talked a little bit about newsstand
22 versus direct market sales?

23 A Yes.

24 Q And it seemed like Exhibit 146 was maybe a good sample
25 to look at here. I note on Exhibit 146 there are a

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1 number of entries for Diamond. I assume that's Diamond
2 distributors?

3 A Yes.

4 Q And then a number of entries for Capital, as well. I
5 assume that's Capital City, is that correct?

6 A Yes.

7 Q Then there's some other miscellaneous entries in here,
8 for example, American Entertainment, Andromeda, on the
9 next page there's Friendly Franks. I'm just wondering
10 are those -- do you consider those newsstands, do you
11 consider those to be distributors?

12 A No. They were all smaller distributors in the direct
13 sales market.

14 Q Okay. So do you know -- do you still -- does Image
15 continue to sell comics to smaller distributors such as
16 the ones reflected on Exhibit 146?

17 A No. In 1996 Image signed an exclusive distribution
18 contract in the direct sales market with Diamond. At
19 that particular point pretty much all of these smaller
20 distributors folded.

21 Q Okay. So turning to Exhibit 134, the spreadsheet, and
22 again the column saying Number of Units Sold
23 Distributors.

24 A Yes.

25 Q For sales made on or before 1996 that are reflected on

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1 Exhibit 134, would that number of units sold figure take
2 into account some of these miscellaneous distributors
3 listed -- identified on Exhibit 146?

4 A Yeah, to our best and most reasonable estimate, yes.

5 Q Do you know how you, or whoever put together this
6 spreadsheet, went about making the estimate up for these
7 miscellaneous distributors?

8 MR. FELDMANN: Objection, asked and
9 answered.

10 A I believe it was calculated under the same formula we
11 did with Diamond.

12 Q Whatever your deal was with Diamond you just assumed the
13 same deal and numbers would apply to those
14 miscellaneous?

15 A It could have been a few percentage points this way or
16 that way. It averaged out there. We took an average as
17 being a reasonable estimate and applied that to the
18 others.

19 MR. SIMMONS: Okay. I'm done in
20 that case. Does anybody else want to jump in?
21 Anybody? Pete?

22 MR. SALSICH: I'm representing Todd
23 McFarlane, Todd McFarlane Productions, TMP
24 International and McFarlane Worldwide,
25 Mr. Valentino, and also on the phone with us is

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1 Gina Carter who represents the same defendants as
2 well.

3 Gina, we're not in the same office,
4 obviously, so we don't know what notes we each have
5 and we haven't had an opportunity to talk. Are
6 there any questions that you have identified that
7 you would like to ask Mr. Valentino?

8 MS. CARTER: No. I have no
9 questions.

10 MR. SALSICH: Okay. Let me take a
11 quick look here, Mr. Valentino. I don't think that
12 I do either.

13 MR. FELDMANN: Why don't we take a
14 one-minute break?

15 MR. SALSICH: That's not a bad idea.

16 (A short recess is taken)

17 MR. FELDMANN: We're ready to
18 conclude.

19 MS. CARTER: I don't have any
20 questions.

21 MR. SIMMONS: This is Jeff. I'm
22 set. Pete?

23 MR. SALSICH: I have no questions.
24 Okay.

25 (4:40 p.m.)

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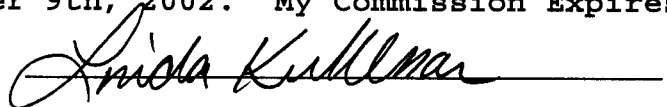
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1 STATE OF WISCONSIN

COUNTY OF DANE

2 I, LINDA KUHLMAN, a Notary Public commissioned and
3 qualified in and for the State of Wisconsin, do hereby
4 certify that, pursuant to notice, there came before me on
5 the 5th day of September, 2002, at the offices of Foley &
6 Lardner, 150 East Gilman Street, Madison, Wisconsin,
7 the following named person, to wit: JAMES VALENTINO, who
8 was by me duly sworn to testify to the truth and nothing
9 but the truth of knowledge touching and concerning the
10 matters in controversy in this cause; that the witness was
11 thereupon carefully examined upon oath; that said
12 examination was taken in shorthand by me and reduced to
13 writing using computer-aided transcription; that said
14 deposition is a true record of the testimony given by the
15 witness; and reading and signing of deposition by said
16 witness were not waived. I further certify that I am
17 neither attorney or counsel for, nor related to or employed
18 by, any of the parties to the action in which this
19 deposition is taken, and further that I am not a relative
20 or employee of any attorney or counsel employed by the
21 parties or financially interested in the action. In
22 witness whereof I have hereunto set my hand and affixed my
23 notarial seal September 9th, 2002. My Commission Expires:

24 7/23/06



25 Notary Public, State of Wisconsin